

REMARKS

The Office Action dated March 22, 2010, has been received and carefully considered. In this response, claims 1, 8, 20, 21, and 23 have been amended, and claims 7 and 22 have been cancelled without prejudice. No new matter has been added. Entry of the amendments to claims 1, 8, 20, 21, and 23, and the cancellation of claims 7 and 22 without prejudice is respectfully requested. Reconsideration of the pending rejections in the present application is also respectfully requested based on the following remarks.¹

I. THE EXAMINER INTERVIEW

At the outset, the undersigned thanks the Examiner for the courtesies extended during the interview conducted on May 28, 2010, and the telephone discussion conducted on June 4, 2010, during which agreement was reached on claim amendments which would result in allowance of the present application, which are reflected herein.

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

II. THE NON-STATUTORY SUBJECT MATTER REJECTION OF CLAIM 21

On pages 2-3 of the Office Action, claim 21 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is hereby respectfully traversed with amendment.

The Examiner asserts that claim 21 is directed to non-statutory subject matter. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 21 to more clearly recite the claimed invention. In particular, Applicant respectfully submits that amended claim 21 recites a non-transitory computer readable storage medium comprising computer instructions for assembling fragmented network traffic. Clearly, amended claim 21 recites statutory subject matter. Thus, Applicant respectfully submits that amended claim 21 satisfies the statutory subject matter requirement under 35 U.S.C. § 101.

In view of the foregoing, Applicant respectfully requests that the aforementioned non-statutory subject matter rejection of claim 21 be withdrawn.

III. THE ANTICIPATION REJECTION OF CLAIMS 1, 3-5, 8, 16, 18-21,
AND 23

On pages 3-5 of the Office Action, claims 1, 3-5, 8, 16, 18-21, and 23 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. US2003/0048793A1 to Pochon et al. ("Pochon"). This rejection is hereby respectfully traversed with amendment.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re King, 801 F.2d 1324, 1326 (Fed. Cir. 1986). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Celeritas Tech., Ltd., v. Rockwell Int'l Corp., 150 F.3d 1354, 1361 (Fed. Cir. 1998). The prior art reference must disclose all of the claim elements arranged or combined in the same way as recited in the claim. Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008). "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art

could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claim 1, the Examiner asserts that Pochon discloses the claimed invention. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 1 to more specifically define the claimed invention, and specifically those features that further differentiate the claimed invention from Pochon, as well as the other cited references. In particular, Applicant respectfully submits that Pochon fails to disclose, or even suggest, a method for assembling fragmented network traffic comprising: detecting, by a monitoring node, an anomaly in the fragmented network traffic whereby two or more fragments within the fragmented network traffic have overlapping offsets; performing a query of a destination node by the monitoring node to determine configuration information associated with how the destination node, to which the two or more fragments are addressed, is configured to reassemble overlapping fragments, wherein the monitoring node is different from the destination node; and reassembling the two or more fragments by the monitoring node according to the configuration information associated with the destination node, as presently claimed. In contrast, Pochon discloses a method for data

normalization for a network intrusion detection system. Network fragments are received and "registered in the normalization table." Pochon, [0052]. Pochon also discloses receiving packets, and comparing the packets to "registered fragments." Fragments are redirected, discarded, or forwarded based on the table entries. See Pochon, Figure 7.

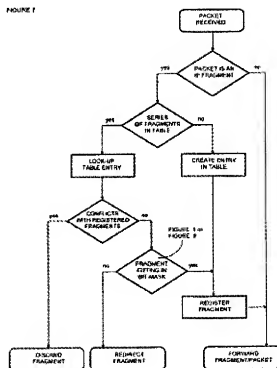


Figure 1 - Pochon Figure 7

Notably, Pochon does not disclose performing a query, as presently claimed, in any manner.

Furthermore, the normalization table of Pochon does not store configuration information about how another node is configured to reassemble overlapping fragments, as presently

claimed. Rather, the normalization table of Pochon simply stores information associated with received fragments and/or network topology information for future comparison with header information of received data packets. See, e.g., paragraph [0051].

Additionally, Pochon discloses forwarding fragments to an end system if no conflict is detected with previously received and registered fragments, or discarding or redirecting fragments if a conflict is detected with previously received and registered fragments. See, e.g., paragraphs [0052]-[0054]. This clearly differs from reassembling the two or more fragments by the monitoring node according to the configuration information associated with the destination node, as presently claimed. Indeed, Pochon fails to disclose reassembly in any manner with respect to its normalization table. Rather, Pochon only discusses reassembly of fragments when describing the shortcomings of the prior art, which does not use a normalization table in any manner. Indeed, the Examiner tries to relate the problems associated with the prior art of Pochon (by citing to paragraphs in the prior art section of Pochon) with the actual invention of Pochon (by citing to paragraphs in the summary and detailed description sections of Pochon) in trying to make a prima facie case of anticipation against the

presently claimed invention. This is clearly improper as these disparate teachings in fact teach away from each other when read in context. Thus, Pochon does not disclose, or even suggest, a method for assembling fragmented network traffic comprising: detecting, by a monitoring node, an anomaly in the fragmented network traffic whereby two or more fragments within the fragmented network traffic have overlapping offsets; performing a query of a destination node by the monitoring node to determine configuration information associated with how the destination node, to which the two or more fragments are addressed, is configured to reassemble overlapping fragments, wherein the monitoring node is different from the destination node; and reassembling the two or more fragments by the monitoring node according to the configuration information associated with the destination node, as presently claimed.

At this point, Applicant respectfully notes that, as stated in MPEP § 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987).

In view of the foregoing, Applicant respectfully submits that claim 1 should be allowable over Pochon.

Regarding claims 20 and 21, while different in overall scope from claim 1, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 20 and 21. Accordingly, Applicant respectfully submits that claims 20 and 21 should be allowable over Pochon for analogous reasons as set forth above with respect to claim 1.

Regarding claims 3-5, 8, 16, 18, 19, and 23, these claims are dependent upon independent claims 1 and 20. Thus, since independent claims 1 and 20 should be allowable as discussed above, claims 3-5, 8, 16, 18, 19, and 23 should also be allowable at least by virtue of their dependency on independent claims 1 and 20. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claims 8 and 23 recite querying an information base. As discussed above, Pochon does not disclose performing a querying in any manner, let alone performing a query of a destination node by the monitoring node to determine configuration information associated with how the destination node, to which the two or more fragments are addressed, is configured to reassemble overlapping fragments, wherein the monitoring node is different from the destination node, as

presently claimed.

In view of the foregoing, Applicant respectfully requests that the aforementioned anticipation rejection of claims 1, 3-5, 8, 16, 18-21, and 23 be withdrawn.

IV. THE OBVIOUSNESS REJECTION OF CLAIMS 7 AND 22

On pages 5-6 of the Office Action, claims 7 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. US2003/0048793A1 to Pochon et al. ("Pochon") in view of U.S. Patent Application Publication No. US2007/0124455A1 to Motoyama et al. ("Motoyama"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible

approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Applicant respectfully submits that the aforementioned obviousness rejection of claims 7 and 22 has become moot in view of the deficiencies of the primary reference (i.e., Pochon) as discussed above with respect to independent claims 1 and 20. That is, claims 7 and 22 are dependent upon independent claims 1 and 20 and thus inherently incorporate all of the limitations of independent claims 1 and 20. Also, the secondary reference (i.e., Motoyama) fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claims 1 and 20. Indeed, the Examiner does not even assert such. Thus, the combination of the

secondary reference with the primary reference also fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claims 1 and 20. Accordingly, claims 7 and 22 should be allowable over the combination of the secondary reference with the primary reference at least by virtue of their dependency on independent claims 1 and 20. Moreover, claims 7 and 22 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, Motoyama teaches querying a monitored device (See, e.g., Abstract), whereas the claimed invention is directed to performing a query of a destination node by the monitoring node. Thus, Motoyama clearly teaches away from the claimed invention.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 7 and 22 be withdrawn.

V. THE OBVIOUSNESS REJECTION OF CLAIMS 9-15

On pages 6-8 of the Office Action, claims 9-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. US2003/0048793A1 to Pochon et al. ("Pochon") in view of U.S. Patent Application

Publication No. US2004/0093513A1 to Cantrell et al.
("Cantrell"). This rejection is hereby respectfully traversed.

Applicant respectfully submits that the aforementioned obviousness rejection of claims 9-15 has become moot in view of the previous cancellation of claim 9 without prejudice and the deficiencies of the primary reference (i.e., Pochon) as discussed above with respect to independent claim 1. That is, claims 10-15 are dependent upon independent claim 1 and thus inherently incorporate all of the limitations of independent claim 1. Also, the secondary reference (i.e., Cantrell) fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claim 1. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary reference also fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claim 1. Accordingly, claims 10-15 should be allowable over the combination of the secondary reference with the primary reference at least by virtue of their dependency on independent claim 1. Moreover, claims 10-15 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 9-15 be withdrawn.

VI. THE OBVIOUSNESS REJECTION OF CLAIMS 24

On pages 8-9 of the Office Action, claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. US2003/0048793A1 to Pochon et al. ("Pochon") in view of U.S. Patent Application Publication No. US2004/0083385A1 to Ahmed et al. ("Ahmed"). This rejection is hereby respectfully traversed.

Applicant respectfully submits that the aforementioned obviousness rejection of claim 24 has become moot in view of the deficiencies of the primary reference (i.e., Pochon) as discussed above with respect to independent claim 1. That is, claim 24 is dependent upon independent claim 1 and thus inherently incorporates all of the limitations of independent claim 1. Also, the secondary reference (i.e., Ahmed) fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claim 1. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary reference with the primary reference also fails to disclose, or even suggest, the

deficiencies of the primary reference as discussed above with respect to independent claim 1. Accordingly, claim 24 should be allowable over the combination of the secondary reference with the primary reference at least by virtue of its dependency on independent claim 1. Moreover, claim 24 recites additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claim 24 be withdrawn.

VII. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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